INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC. v. ATTORNEY ... THE UNITED STATES Doc. 5 Att. 4

TITLE VIII—UNLAWFUL INTERNET GAMBLING ENFORCEMENT

SEC. 801. SHORT TITLE.

This title may be cited as the "Unlawful Internet Gambling Enforcement Act of 2006".

SEC. 802. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by adding at the end the following:

"SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

"§ 5361. Congressional findings and purpose

"(a) FINDINGS.—Congress finds the following:

"(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers.

"(2) The National Gambling Impact Study Commission in 1999 recommended the passage of

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legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites.

"(3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.

"(4) New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.

"(b) RULE OF CONSTRUCTION.—No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

"§ 5362. Definitions

"In this subchapter:

"(1) BET OR WAGER.—The term 'bet or wager'—

"(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

"(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

"(C) includes any scheme of a type described in section 3702 of title 28;

"(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

"(E) does not include—

"(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

"(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

"(iii) any over-the-counter derivative instrument;

"(iv) any other transaction that—

"(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

"(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

"(v) any contract of indemnity or guarantee;

"(vi) any contract for insurance;

"(vii) any deposit or other transaction with an insured depository institution;

"(viii) participation in any game or contest in which participants do not stake or risk anything of value other than—

"(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

"(II) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

"(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

"(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

"(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

"(III) No winning outcome is based—

"(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

"(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

"(2) BUSINESS OF BETTING OR WAGERING.—The term 'business of betting or wagering' does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

"(3) DESIGNATED PAYMENT SYSTEM.—The term 'designated payment system' means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

"(4) FINANCIAL TRANSACTION PROVIDER.—The term 'financial transaction provider' means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

"(5) INTERNET.—The term 'Internet' means the international computer network of interoperable packet switched data networks.

"(6) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' has the meaning given the term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).

"(7) RESTRICTED TRANSACTION.—The term 'restricted transaction' means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

"(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(9) STATE.—The term 'State' means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

"(10) UNLAWFUL INTERNET GAMBLING.—

"(A) IN GENERAL.—The term 'unlawful Internet gambling' means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

"(B) INTRASTATE TRANSACTIONS.—The term 'unlawful Internet gambling' does not include placing, receiving, or otherwise transmitting a bet or wager where—

"(i) the bet or wager is initiated and received or otherwise made exclusively within a single State;

"(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

"(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

"(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

"(iii) the bet or wager does not violate any provision of—

"(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

"(II) chapter 178 of title 28 (commonly known as the 'Professional and Amateur Sports Protection Act');

"(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

"(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

"(C) INTRATRIBAL TRANSACTIONS.—The term 'unlawful Internet gambling' does not include placing, receiving, or otherwise transmitting a bet or wager where—

"(i) the bet or wager is initiated and received or otherwise made exclusively—

"(I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act; or

"(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

"(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

"(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

"(II) with respect to class III gaming, the applicable Tribal-State Compact;

"(iii) the applicable tribal ordinance or resolution or Tribal-State compact includes—

"(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

"(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

"(iv) the bet or wager does not violate any provision of—

"(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

"(II) chapter 178 of title 28 (commonly known as the 'Professional and Amateur Sports Protection Act');

"(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

"(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

"(D) INTERSTATE HORSERACING.—

"(i) IN GENERAL.—The term 'unlawful Internet gambling' shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

"(ii) RULE OF CONSTRUCTION REGARDING PREEMPTION.—Nothing in this subchapter may be construed to preempt any State law prohibiting gambling.

"(iii) SENSE OF CONGRESS.—It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of the enactment of this subchapter. This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

"(E) INTERMEDIATE ROUTING.—The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

"(11) OTHER TERMS.—

"(A) CREDIT; CREDITOR; CREDIT CARD; AND CARD ISSUER.—The terms 'credit', 'creditor', 'credit card', and 'card issuer' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

"(B) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer'—

"(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

"(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

"(C) FINANCIAL INSTITUTION.—The term 'financial institution' has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

"(D) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution'—

"(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

"(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

"(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary thereunder).

"§ 5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling

"No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

"(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

"(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

"(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

"(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

"§ 5364. Policies and procedures to identify and prevent restricted transactions

"(a) REGULATIONS.—Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways:

"(1) The establishment of policies and procedures that—

"(A) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

"(B) block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A).

"(2) The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction.

"(b) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall—

"(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction;

"(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions;

"(3) exempt certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions; and

"(4) ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling in subparagraphs (B), (C), or (D)(i) of section 5362(10) are not blocked or otherwise prevented or prohibited by the prescribed regulations.

"(c) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a) if—

"(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—

"(A) identify and block restricted transactions; or

"(B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

"(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).

"(d) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.—A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction—

"(1) that is a restricted transaction;

"(2) that such person reasonably believes to be a restricted transaction; or

"(3) as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a),

shall not be liable to any party for such action.

"(e) REGULATORY ENFORCEMENT.—The requirements under this section shall be enforced exclusively by—

"(1) the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodities Exchange Act; and

"(2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1).

"§ 5365. Civil remedies

"(a) JURISDICTION.—In addition to any other remedy under current law, the district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.

"(b) PROCEEDINGS.—

"(1) INSTITUTION BY FEDERAL GOVERNMENT.—

"(A) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.

"(B) RELIEF.—Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

"(2) INSTITUTION BY STATE ATTORNEY GENERAL.—

"(A) IN GENERAL.—The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation.

"(B) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

"(3) INDIAN LANDS.—

"(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

"(i) the United States shall have the enforcement authority provided under paragraph (1); and

"(ii) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact.

"(B) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

"(c) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

"(1) IN GENERAL.—Relief granted under this section against an interactive computer service shall—

"(A) be limited to the removal of, or disabling of access to, an online site violating section 5363, or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under section 5367;

"(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

"(C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this subchapter;

"(D) specify the interactive computer service to which it applies; and

"(E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

"(2) COORDINATION WITH OTHER LAW.—An interactive computer service that does not violate this subchapter shall not be liable under section 1084(d) of title 18, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

"(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

"(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

"(d) LIMITATION ON INJUNCTIONS AGAINST REGULATED PERSONS.—Notwithstanding any other provision of this section, and subject to section 5367, no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider.

"§ 5366. Criminal penalties

"(a) IN GENERAL.—Any person who violates section 5363 shall be fined under title 18, imprisoned for not more than 5 years, or both.

"(b) PERMANENT INJUNCTION.—Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

"§ 5367. Circumventions prohibited

"Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—

"(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

"(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end the following:

"SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

"5361. Congressional findings and purpose
"5362. Definitions
"5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling
"5364. Policies and procedures to identify and prevent restricted transactions
"5365. Civil remedies
"5366. Criminal penalties
"5367. Circumventions prohibited".

SEC. 803. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any foreign country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information

sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering purposes.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on any deliberations between the United States and other countries on issues relating to Internet gambling.

And the Senate agree to the same.